Supreme Court, U.S.
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NO. 83-1589

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

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CITY OF NORTH OLMSTED, OHIO,

PETITIONER

vs.

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY,

RESPONDENT

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CITY OF NORTH OLMSTED, OHIO,
Plaintiff-Appellant,

v.

GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY,
Defendant-Appellee.

No. 82-3135

United States Court of Appeals,
Sixth Circuit.

Argued March 29, 1983.

Decided Dec. 2, 1983.

City brought action against another city's transit authority, alleging anti-trust violations. The United States District Court for the Northern District of Ohio, John M. Manos, J., entered summary judgment in favor of transit authority, and city appealed. The Court of Appeals, Wellford, Circuit Judge, held that actions of city transit authority in absorbing municipal bus lines in county and allegedly obtaining a complete monopoly of bus service were contemplated and authorized by state

law which created the authority, and constituted state or state subdivision action in furtherance of affirmatively expressed state policies; therefore, the state action exemption to Sherman Act was correctly found to apply to the authority's alleged action.

Affirmed.

1. Monopolies - 12(15.5)

Actions of city transit authority in absorbing municipal bus lines in county and allegedly obtaining a complete monopoly of bus service were contemplated and authorized by state law which created the authority, and constituted state or state subdivision action in furtherance of affirmatively expressed state policies; therefore, the state action exemption to Sherman Act was correctly found to apply to the authority's alleged action. Sherman Anti-Trust Act, Section 1 et seq., 15 U.S.C.A. Section 1 et seq.

2. Monopolies - 12(15.5)

Alleged failure by city transit authority to share with another city or allocate Urban Mass Transportation Act funds to it was not actiorable under the Sherman Act, because neither federal or state law required equal distribution of potential benefits in the form of inventory subsidies. Sherman Anti-Trust Act, Section 1 et seq., 15 U.S.C.A. Section 1 et seq.; Ohio Const. Art. 18, Section 4.

3. Judgment - 828(3.16)

In action brought against city transit authority for alleged violations of anti-trust statutes and State Constitution, a prior opinion of state court on the state constitutional issue had res adjudicata effect, because state court's judgment that municipalities had no exclusive right to conduct transit services within or without their corporate boundaries was a final

adjudication on the claim, and state court's rationale was determinative and settled finally all claims raised by plaintiff in the federal suit.

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Michael R. Gareau, James M. Dubelko, argued, North Olmsted, Ohio, for plaintiff-appellant.

Malcolm C. Douglas, argued, Edward J. Opett, Cleveland, Ohio, for defendant-appellee.

Before MERRITT, KENNEDY and WELLFORD, Circuit Judges.

WELLFORD, Circuit Judge.

This is an appeal from the grant of a summary judgment by the trial judge in this case in which the appellant, City of North Olmsted, Ohio, has sued the Greater Cleveland Regional Transit Authority (GCRTA), appellee, for alleged violations of the Sherman Anti-trust Act and the Ohio Constitution in attempting to monopolize public trans-

portation in Cuyahoga County, Ohio. North Olmsted sought an injunction to prevent GCRTA from furnishing bus transportation inside its corporate limits, and requesting that GCRTA be directed to effectuate an agreement which would apportion to it a part of GCRTA's transportation subsidies. Appellee is charged with violating Section 2 of the Sherman Antitrust Act, 15 U.S.C. Section 2, which provides:

> Every person who shall monopolize, or attempt to monopolize...any part of the trade or commerce among the several States...shall be deemed guilty...(of unlawful conduct).

The Ohio constitutional provision relied upon by appellant is Article 18, Section 4 (the Home Rule Amendment), Ohio Const. art. 18 Section 4, which provides:

> Any municipality may acquire, construct, own, lease, and operate within

> or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service...

The district court properly found jurisdiction in this case. To understand the controversy, it is necessary to recite some background, most of which is uncontested.

North Olmsted is an Ohio municipality that has owned and operated a city bus line since 1931 within its territorial boundaries as provided for in the so-called home Rule Amendment to the Ohio Constitution (Article 18, Section 4). In 1974, the Ohio Code was amended to provide for the creation, funding and operation of regional transit authorities as political subdivisions of

the state. In 1974, under that statutory authority GCRTA was created by the City of Cleveland, and Cuyahoga County, and began operating a bus line in Cuyahoga County, Ohio, composed of bus line assets transferred to GCRTA from the cities of Cleveland and Shaker Heights, Ohio. In 1975, North Olmsted and GCRTA entered into "operating agreements" whereby appellant agreed to provide municipal transit operations and GCRTA agreed to assist by financial subsidy appellant's transit operations. Several extensions of the agreement were entered into which remained in effect until March 5, 1980. After negotiations, the parties could not reach agreement after that time about renewal of the contractual relationships, or about GCRTA's eventual acquisition of appellant's transit system.

Appellant first filed a declaratory judgment action against GCRTA in Ohio court

under a variety of state law theories. The Ohio court found that the evidence did not show that GCRTA had threatened or attempted to coerce appellant; that GCRTA was under no duty, statutory or otherwise, to continue its relationship with North Olmsted; and that municipal corporations such as North Olmsted were not granted freedom from competition under the laws or constitution of Ohio. This trial court decision to deny North Olmsted any relief was affirmed by the Cuyahoga County Court of Appeals. North Olmsted's subsequent appeal to the Ohio Supreme Court was dismissed.

After the failure to obtain any relief in Ohio courts, appellant filed this suit in federal district court, alleging that, among other things, in 1977, GCRTA implemented a plan to achieve a monopoly in bus transportation in Cuyahoga County in violation of Section 2 of the Sherman Antitrust Act.

The district court granted summary judgment for GCRTA on this claim, holding that the activities of GCRTA were exempt from the scope of the federal antitrust laws under the "state action" doctrine. The rationale for this holding was that GCRTA was created for the express purpose of providing unified and dependable public transportation service within Cuyahoga County, and this enactment demonstrated that "the Ohio legislature was not ignorant of the possibility that a municipally owned transit system would either fail or be absorbed upon the formation of a regional transit authority..." The trial court found that GCRTA was acting under the authority of the Ohio legislature and that the legislature contemplated the conduct about which North Olmsted complained. Accordingly, GCRTA fell within the "state action" exemption to antitrust liability in respect to its challenged actions in this case.

When GCRTA was created, the cities of Shaker Heights, Euclid and Maple Heights, in addition to Cleveland and North Olmsted, owned and operated municipal transit systems. Cleveland and Shaker Heights in 1975 transferred their transit systems to GCRTA on the condition that Cuyahoga County voters approve a 1% sales tax levy for regional transit purposes. That condition was carried out by the Cuyahoga County voters, included among whom were those in North Olmsted. The "operating agreement" reached not long thereafter between the parties to this litigation provided that North Olmsted would provide municipal transit services inside its boundaries, and GCRTA would provide a full financial subsidy for these operations from the sales tax levy. That agreement also contained a proviso that it was "contemplated by the parties that (GCRTA) may eventually assume operation,

ownership and control of (North Olmsted's) scheduled bus service." Euclid, Ohio, which had a similar such agreement, transferred its bus transit system to GCRTA in 1979.

The operating agreement was to expire in 1980, but during negotiations regarding a further extension, appellant filed its unsuccessful suit against GCRTA in state court.

The state court found in the declaratory judgment proceding that GCRTA had "fulfilled all of its contractual obligations under said operating agreement(s) to... North Olmsted," and that GCRTA had not threatened appellant with termination of the operating agreement "in order to wrongfully coerce (it) to enter into an agreement to transfer (its) municipally owned transit system(s)" to GCRTA. As a consequence of these, and other findings, the Ohio trial judge concluded that GCRTA had the duty to provide county-wide transportation service; that GCRTA, due

to the expiration of the operating agreement had "no continuing obligations" thereunder; that GCRTA had no duty to continue its relationship with appellant and that neither the Ohio laws nor constitution precluded GCRTA from "operating parallel transit service lines" through North Olmsted.

The judgment of the Court of Common Pleas was affirmed by the Ohio Court of Appeals,[2] which held that "(w)here a county creates a regional transit authority for the entire county the jurisdiction of said authority is the entire county." (emphasis added). The Court of Appelas further held that under Section 306.35(G)[3] of the Revised

[2]Greater Cleveland Regional Transit Authority v. City of Maple Heights, No. 43419 (Ohio Ct. App. filed May 14, 1981).

[3]A regional transit authority:
"May acquire, construct, improve, extend, repair, lease, operate, maintain, or manage transit facilities within or without its territorial boundaries, considered necessary to accomplish the

Code of Ohio, "the authority is authorized to operate transit facilities within" the municipality of North Olmsted and others within Cuyahoga County.

"In its proceeding in the federal court, North Olmsted charged that GCRTA had "periodically engaged in sham negotiations" with respect to the proposed renewal of the operating agreements" with intent of forcing Plaintiff, and those other operators, to either sell their bus lines to the GCRTA," or to force North Olmsted and others out of business. The complaint recited GCRTA's absorption of other municipal bus lines in Cuyahoga County, and that GCRTA was engaging in these activities to obtain "a complete monopoly of bus service." North Olmsted also complained that GCRTA had purchased

[3]purposes of its organization and make charges for the use of transit facilities." Ohio Revised Code Ann. Section 306.35(G) (Page Supp. 1982).

new buses for its operations, "but has refused to aid, assist, or provide Plaintiff with any of these new buses..." Further, it was charged that GCRTA's subsidies from the tax levy enabled it to exploit its position at North Olmsted's expense so that it could offer lower "anticompetitive fare rates."

GCRTA claims exemption from the claimed antitrust statutory violations under the rationale of Parker v. Brown, 317 U.S. 341, 63 S. Ct. 307, 87 L.Ed. 315 (1943) and the line of cases that set out a "state action" doctrine, which precludes enforcement of the Sherman Act to "official action directed by a state." Parker at 351, 63 S.Ct. at 313. It was specifically held in Parker:

> We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers oe agents from activities directed by its legislature.

317 U.S. at 350-51, 63 S.Ct. at 313.

This doctrine enunciated in Parker was held to exempt "anti-competitive conduct engaged in as an act of government by the state as sovereign, or, by its subdivisions, pursuant to state policy to displace competition with regulation or monopoly public service..." from Sherman Act control. City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389,413,98 S.Ct. 1123, 1136, 55 L.Ed.2d 364 (1978) (emphasis added).

The Lafayette case involved the actions of a city, a political subdivision of the State of Louisiana, which were challenged by a private utility company as anti-competitive under the Sherman Act. The court plurality rejected the claim made by Lafayette of state action exemption, but stated, nonetheless:

> This does not mean, however, that a political subdivision necessarily must

be able to point to a specific, detailed legislative authorization before it properly may assert a Parker defense to an antitrust suit. While a subordinate governmental unit's claim to Parker immunity is not as readily established as the same claim by a state government sued as such, we agree with the Court of Appeals that an adequate state mandate for anticompetitive activities of cities and other subordinate governmental units exists when it is found "from the authority given a governmental entity to operate in a particular area, that the legislature contemplated the kind of action complained of." 435 U.S. at 415, 98 S.Ct. at 1138 (footnote omitted).

(1) That decision was later characterized as emphasizing "that the State as sovereign might sanction anticompetitive

municipal activities and thereby immunize municipalities from antitrust liability." Community Communications Co. v. Boulder, 455 U.S. 40, 51, 102 S. Ct. 835, 840, 70 L.Ed 2d 810(1982). The court in Community Communications Co. elaborated on the effect of the Lafayette decisions:

> This was simply a recognition that a State may frequently choose to effect its policies through the instrumentality of its cities and towns. It was stressed, however, that the "state policy" relied upon would have to be "clearly articulated and affirmatively expressed." This standard has since been adopted by a majority of the Court.

455 U.S. at 51, 102 S.Ct. at 840 (quoting Lafayette, 435 U.S. at 410, 98 S.Ct. at 1135). Based on the authoritative interpretation of the Ohio Regional Transportation Act given by the Ohio courts, we

conclude that the actions of GCRTA alleged in North Olmsted's complaint were contemplated and authorized by state law and constituted state or state subdivision action in furtherance of "affirmatively expressed state policy." Community Communications Co., 455 U.S. at 52, 102 S.Ct. at 841. See City of Lafayette; and New Motor Vehicle Board of Calif. v. Orrin W. Fox Co., 439 U.S. 96, 109 99 S.Ct. 403, 411, 58 L.Ed. 2d 361 (1978). The alleged anti-competitive conduct of GCRTA was engaged in pursuant to a clearly articulated state policy expressed by legislative action creating regional, or county-wide, transportation authorities. The state action exemption, then, was correctly found to apply to GCRTA's alleged actions as a matter of law by the district court. Accordingly, North Olmsted is precluded from maintaining its antitrust cause of action. See also the decision of

this court in Hybud Equipment Co. v. City of Akron, 654 F.2d 1187, 1195 (6th Cir. 1981).

(2) The alleged failure by GCRTA to share with North Olmsted or to allocate Urban Mass Transportation Act funds to it is not in our view actionable under the Sherman Act. The decision of the Ohio court in the declaratory judgment suit filed by appellant clearly indicated that the Ohio policy in enacting the regional transit authority act did not require "equal distribution of potential benefits in the form of inventory subsidies." Although that decision related to a state sales tax levy, the reasoning is sound and applicable as well to the federal act. The federal act does not mandate such apportioning of subsidy funds in order to avoid the impact of the Sherman Act.[4]

[4]We would agree with the Ohio Appellate Court that "we find no federal statute or policy precluding competition be-

(3) We also affirm the judgment of Judge Manos on the Ohio constitutional claim because we agree that the North Olmsted action in that respect is barred by the principles of res adjudicata. "A judgment on the merits in a prior suit involving the same parties or their privies bars a second suit based on the same course of action." Lawlor v. National Screen Service Corp., 349 U.S. 322, 326, 75 S.Ct. 865, 867, 99 L.Ed. 1122 (1955).

The Ohio Appellate Court, in construing the applicable Ohio statutes and Article 18, Section 4 of the Ohio Constitution, specifically held that municipalities have no "exclusive right to conduct transit services within or without their corporate boundaries." This state court decision was a final adjudication on this Ohio pendant

[4] tween federally funded regional transit authorities and municipal transit lines."

claim of North Olmsted seeking the federal court's order of preclusion against GCRTA operations within its boundaries. (Actually, of course, any such bus transit activity of GCRTA in North Olmsted would enhance rather than restrict competition.) Similarly, the decision of the Ohio appellate court that "the jurisdiction of the authority is the entire county," is a final adjudication on a further state claim of appellant. Furthermore, the Ohio appellate court held in the action previously filed by North Olmsted that under that state's constitution and laws "local and municipal interests must yield to the larger concerns of the State of Ohio." That rationale is determinative and settles finally as a matter of res adjudicata the claims of appellant in this proceeding.

For the reasons indicated, we AFFIRM the judgment of the district court in all respects.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|---|---|---|
| CITY OF NORTH OLMSTED, OHIO, | : | CASE NO. C81-2058 |
| | : | Judge John M. Manos |
| Plaintiff, | : | |
| v. | : | |
| GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, | : | MEMORANDUM OF OPINION |
| Defendant. | : | |

On October 16, 1981 plaintiff, the City of North Olmsted, Ohio, filed the above-captioned case alleging that the defendant, the Greater Cleveland Regional Transit Authority, (hereinafter, GCRTA), violated Section 2 of the Sherman Antitrust Act, 15 U.S.C. Section 2[1] and Article 18, Section 4 of the Ohio Constitution[2] by

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[1] 15 U.S.C. Section 2 provides as follows:

> Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony,

attempting to monopolize public transportation within Cuyahoga County, Ohio. North Olmsted requests that the GCRTA be enjoined from operating competing and parallel bus lines in North Olmsted and that the GCRTA be directed to negotiate an operating agreement which would provide North Olmsted with a share of the GCRTA's transportation subsidies.

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1 and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

2 Article 18, Section 4 of the Ohio Constitution provides in pertinent part as follows:

> Any municipality may acquire, construct, own, lease, and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service...

No damages are requested. Jurisdiction is invoked under 28 U.S.C. Section 1337(a)[3] and 15 U.S.C. Section 26.[4]

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3 28 U.S.C. Section 1337(a) provides as follows:

> The district courts shall have original jurisdiction of any civil action or proceeding arising under any trade and commerce against restraints and monopolies: Provided, however, That the district courts shall have original jurisdiction of any action brought under Section 20(11) of part I of the Interstate Commerce Act (49 U.S.C. 20(11)) or section 219 or part II of such Act (49 U.S.C. 319), only if the matter in controversy for each receipt or bill of lading exceeds $10,000, exclusive of interest and costs.

4 15 U.S.C. Section 26 provides as follows:

> Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon

On November 20, 1981 the GCRTA filed a motion for judgment on the pleadings or, in the alternative, summary judgment. Fed. R. Civ. P. 12(c) and 56. For the reasons which follow the GCRTA's motion for summary judgment is granted.

The City of North Olmsted is located in Cuyahoga County, Ohio. Since 1931 it has

[4] the execution of proper bond against damages for an injunction improfidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: Provided, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission. In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

owned and operated the North Olmsted Municipal Bus Line, (hereinafter, NOMBL). On December 30, 1974 the GCRTA was created by joint action of the City of Cleveland, Ohio, which owned and operated a municipal bus line and Cuyahoga County, which did not. See: OHIO REV. CODE ANN. Section 306.30 et. seq., (Page). At the time the GCRTA was created the Cities of Shaker Heights, Euclid and Maple Heights also owned and operated municipal transit systems. On May 21, 1975 Cleveland agreed to transfer its transit system to the GCRTA subject to the condition that the voters of Cuyahoga County approve a sales tax levy for regional transit purposes of not less than one percent (1%). On July 22, 1975 Shaker Heights agreed, subject to the same condition precedent, to transfer its transit system. On that same date the voters of Cuyahoga County approved the one percent (1%) sales tax levy.

On October 5, 1975 North Olmsted and the GCRTA reached an agreement entitled "Public Transportation Operating AGreement" whereby North Olmsted agreed to provide certain municipal transit services and the GCRTA agreed to provide a full financial subsidy of North Olmsted's transit operations. Unless extended by mutual consent of the parties, the agreement expired on October 5, 1977. The agreement also provided that it was "contemplated by the parties that the (GCRTA) may eventually assume operation, ownership and control of (North Olmsted's) scheduled bus service.[5] When the term of the agreement expired the parties negotiated several extensions which

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[5] On July 5, 1975 the GCRTA reached a similar agreement with the City of Euclid. Pursuant to that agreement the Euclid municipal transit system was transferred to the GCRTA on July 1, 1979.

remained in effect until March 5, 1980. At this time, although negotiations continued, the parties neither reached an agreement concerning renewal of their previous contractual relationship nor, concerning the GCRTA's eventual acquisition of North Olmsted's transit system. Accordingly, the parties' contract expired pursuant to the provisions contained therein.

On June 8, 1979, while negotiations between the parties continued, the GCRTA filed a declaratory judgment action against North Olmsted in the Cuyahoga County, Ohio Court of Common Pleas. The GCRTA sought a declaration of its rights, duties and obligations under the operating agreement and under OHIO REV. CODE ANN. Section 306.30 et. seq., (Page). On that same date North Olmsted filed a similar action against the GCRTA. In addition to outlining a procedural history of the parties' dispute similar

to that above, the Court of Common Pleas made the following findings of fact and conclusions of law:

FINDINGS OF FACT:

23. (The GCRTA) fulfilled all of its contractual obligations under (the) Operating Agreements to .... North Olmsted.

24. The evidence does not show that (the GCRTA) has repeatedly or wrongfully threatened ... North Olmsted with termination of the Operating Agreement relationship in order to wrongfully coerce (it) to enter into an agreement to transfer (its) municipally owned transit system to (the GCRTA).

25. The Operating Agreements between (the GCRTA) and ... North Olmsted have expired.

CONCLUSIONS OF LAW:

4. The Territorial jurisdiction of the (GCRTA) is county wide and such authority

has the statutory duty to provide transportation service to ridership throughout Cuyahoga County.

7. The payment by residents of... North Olmsted of a sales tax levied county wide for the purpose of the (GCRTA) does not require the equal distribution of potential benefits in the form of monetary subsidies in proportion to the burden of the tax levied.

8. The Public Transportation Operating Agreements between the (GCRTA) and... North Olmsted have expired by lapse of time and the (GCRTA) has no continuing obligations under the terms of said operating agreements.

10. The (GCRTA) is under no statutory duty to continue its relationship with... North Olmsted under the terms of the Operating Agreements, nor does such a duty arise on the theory of "estoppel" or

"vested interest."

11. Neither the Constitution nor the statutes of the State of Ohio prohibit the (GCRTA) from operating parallel transit service lines through ... North Olmsted.

13. Municipal corporations are not granted freedom from competition, nor exclusive territorial rights in the operation of their transit systems, either by the Ohio Constitution or the statutes of the State of Ohio.

14. The fact that the operation of parallel competitive service lines by the (GCRTA) would affect adversely the value of and the profitability of suburban transit systems does not, in and of itself, constitute an unlawful appropriation of property, nor an invasion of home rule powers of municipalities.

16. The suburban ridership must be afforded continuing transit service at its

present level of quality and frequency, and, therefore, the (GCRTA) is required to implement and to maintain such degree of county-wide service by any feasible method, whether it be by purchase of suburban lines, by entering into operating agreements with the suburbs or by operating parallel transit lines whenever necessary.

On May 14, 1981 this judgment was affirmed by the Cuyahoga County Court of Appeals. That court held:

> ...Article XVIII, Section 4 of the Ohio Constitution does not grant municipalities an exclusive right to conduct transit services within or without their corporate boundaries. Said Article is permissive in nature, permitting a municipality to create and operate any public utility for the benefit of its inhabitants. While it is correct that a state legislature

cannot limit or restrict such municipal power, in the instant cause, the authority is not seeking to do so and the declaration by the trial court does not attempt to do so.

* * *

Since Article XVIII, Section 4 of the Ohio Constitution permits municipalities to own and operate a bus line within its jurisdiction and Chapter 306 of the Revised Code authorizes a county-wide transit authority to operate transit facilities within its territorial boundaries, the possibility of competing bus lines exists in North Olmsted. . .

* * *

In the cause sub judice, Chapter 306 is a legislative enactment by the legislature of Ohio in an area

of statewide concern, public transportation. While such legislation does not conflict with the power of municipalities to own and operate their own transit systems, a municipality cannot override the powers of regional transit systems, authorized by state legislation to operate such systems throughout their jurisdictions, including municipalities which be within a county-wide transit authority.

We find no federal statute or policy precluding competition between federally funded regional transit authorities and municipal transit lines, as contended by.... North Olmsted...

Nor do we find any authority for the proposition..that the trial court erred in declaring that the Authority

is not obligated to cooperate with... North Olmsted...in providing county-wide mass transit services to (that city).

Thus, we conclude the determination of whether or not to enter into agreements with...North Olmsted...is within the sound discretion of the Greater Cleveland Regional Transit Authority.

Ct..App. Op. pp. 7-8, 10-11. On September 16, 1981 North Olmsted's appeal to the Supreme Court of Ohio was dismissed on the ground that it failed to raise a substantial constitutional question.

In counts one and two of its complaint North Olmsted alleges that in 1977, the GCRTA implemented a plan to achieve a monopoly in bus transportation in Cuyahoga County in violation of Section 2 of the Sherman Antitrust Act. In count one of its complaint North Olmsted claims that the GCRTA committed the following acts for the

sole purpose of furthering its alleged attempt to monopolize:

(a) Since 1977, Defendant GCRTA has periodically engaged in sham negotiations in proposed renewals of the operating agreements with other bus line operators in Cuyahoga County, with intent of forcing Plaintiff, and those other operators, to either sell their bus lines to the GCRTA, or, in the alternative to be forced out of business. Such action culminated in the out-right refusal of Defendant GCRTA to renew its operating agreements with Plaintiff, or, any other bus line operator, in Cuyahoga County.

(b) Since 1975, Defendant GCRTA has systematically absorbed the former municipally-owned bus lines

of the Cities of Cleveland, Shaker Heights, and Euclid; and is currently engaged in an attempt to absorb the Maple Heights Bus Line, and the NOMBL, which, if accomplished, would result in a complete monopoly of bus service by Defendant GCRTA in Cuyahoga County.

(c) Since 1975, Defendant GCRTA has purchased many new buses for operation of RTA lines in Cuyahoga County, but has refused to aid, assist, or provide Plaintiff with any of these new buses for operation by the NOMBL.

In count two of its complaint North Olmsted alleges that the subsidies that the GCRTA receives enables it to exploit its market position and entice customers away from the NOMBL because the subsidies

provide the GCRTA with a means to offer "anticompetitive fare rates substantially lower than any which (North Olmsted) can offer through the ownership and operation of the NOMBL." Therefore, North Olmsted alleges that the refusal of the GCRTA to renew the operating agreement, which, as noted above provides a full financial subsidy for North Olmsted's transit operation, constitutes an anticompetitive attempt to monopolize in violation of Section 2 of the Sherman Antitrust Act. For the reasons which follow this court holds that the activities of the GCRTA are exempt from the scope of the federal antitrust laws including Section 2 of the Sherman Antitrust Act.

In Parker v. Brown, 317 U.S. 341, 63 S.Ct. 307 (1943), the United States Supreme Court rejected a raisin producer's claim that a California marketing program, established pursuant to statute, violated

the Sherman Act. The Court reasoned that since California had adopted the marketing program for the specific purpose of restricting competition and maintaining prices, no antitrust liability could be imposed for the anticompetitive conduct complained of because it constituted action in furtherance of a state legislative mandate.

Specifically, the Court held:

> The Sherman Act makes no mention of the state as such, and gives no hint that it was intended to restrain state action or official action directed by a state. ...There is no suggestion of a purpose to restrain state action in the Act's legislative history. The sponsor of the bill which was ultimately enacted as the Sherman Act declared that it prevented only "business combinations."

317 U.S. at 351, 63 S. Ct. at 313.

Concerning the lack of legislative history, the Court emphasized:

> We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature. In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress.

317 U.S. at 350, 351, 63 S. Ct. at 313.

Although the Parker doctrine does not lead to the "facile conclusion that action by any public official automatically con-

fers exemption," Padgett v. Louisville & Jefferson County Air Board, 492 F.2d 1258, 1259 (6th Cir. 1974), it clearly exempts "anticompetitive conduct engaged in as an act of government by the State as sovereign, or, by its subdivision, pursuant to state policy to displace competition with regulation or monopoly public service." City of Lafayette, Louisiana v. Louisiana Power & Light Co., 435 U.S. 389, 413, 98 S. Ct. 1123, 1137 (1978). In Lafayette, the Court further held that, "(w)hile a subordinate governmental unit's claim to Parker immunity is not as readily established as the same claim by a state government sued as such, we agree with the Court of Appeals that an adequate state mandate for anticompetitive activities of cities and other subordinate governmental units exists when it is found from the authority given a governmental entity to operate in a

particular area, that the legislature contemplated the kind of action complained of." (Citations omitted). City of Lafayette, Louisiana Power & Light Co., supra, 435 U.S. at 415, 98 S. Ct. at 1138.

In the instant case, the State of Ohio, as an act of government, has authorized the establishment of regional transit authorities, defined the territorial jurisdiction in which they may operate and delineated their rights, powers and duties with great specificity in OHIO REV. CODE ANN. 306.30 through 306.54, 306.70 and 306.71 (Page). Pursuant to those statutes it is clear that the GCRTA was validly created for the express purpose of providing a unified and dependable public transportation service within Cuyahoga County. When the statutes are examined in detail it is equally clear that the Ohio legislature was not ignorant of the possibility that a municipally owned

transit system would either fail or be absorbed upon the formation of a regional transit authority within the county in which that municipality was located. Accordingly, this court holds that the GCRTA, by engaging in the conduct which is the subject of North Olmsted's complaint, is acting under authority granted it by the Ohio legislature and that the legislature contemplated the kind of conduct of which North Olmsted complains. See: City of Lafayette, Louisiana v. Louisiana Power & Light Co., supra. See also: Ladue Local Lines, Inc. v. Bi-State Development Agency, 433 F.2d 131 (8th Cir. 1970), in which the Eighth Circuit Court of Appeals held that when a political body created by the legislature of Illinois and Missouri which, in operating bus transportation facilities, was acting under legislative authorization that was granted pursuant to a legislative policy that the public interest

would best be served by a unified public transportation system, the activity was exempt from the federal antitrust laws, even though it created a monopoly that harmed the competitive interests of private bus concerns.

In count three of its complaint North Olmsted alleges that any attempt by the GCRTA to monopolize a public utility servicing Cuyahoga County is in direct conflict with Article 18, Section 4 of the Ohio Constitution. For the reasons which follow this court holds that North Olmsted's claim is barred by the doctrine of res judicata.

The United States Supreme Court has held that "under the doctrine of res judicata, a judgment on the merits in a prior suit involving the same parties or their privies bars a second suit based on the same cause of action." Lawlor v. National Screen Service Corp., 349 U.S. 322, 326, 75 S.Ct.

865, 867 (1955); Parklane Hosiery Co., Inc. Shore, 439 U.S. 322, 99 S.Ct. 645 (1979). The doctrine is premised in an overall fairness rational, Shimman v. Frank, 625 F.2d 80 (6th Cir. 1980), and "is not discretionary in nature, but rather, is embodied in a congressional mandate that the courts must conscientiously follow." James v. Gerber Products Co., 587 F.2d 324, 327 (6th Cir. 1978), citing 28 U.S.C. Section 1738.[6] In the prior action between the parties the Cuyahoga County Court of Common

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6 28 U.S.C. Section 1738 provides in pertinent part as follows:

> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. (Emphasis added).

Pleas held that "(n)either the Constitution nor the statutes of the State of Ohio prohibit the (GCRTA) from operating parallel transit service lines through...North Olmsted," and that North Olmsted was "not granted freedom from competition, nor exclusive territorial rights in the operation of (its) transit systems either by the Ohio Constitution or the statutes of the State of Ohio." Clearly, North Olmsted's state constitutional claims have been litigated. The fact that North Olmsted did not allege an attempt to monopolize in the Court of Common Pleas does not alter this result because as held by the Cuyahoga Court of Appeals, Article 18, Section 4 of the Ohio Constitution is simply "permissive in nature permitting a municipality to create and operate any public utility for the benefit of its citizens." Ct. App. Op., p. 7. It, therefore, neither imposes liability nor

creates a cause of action for an attempt to monopolize.

Accordingly, the defendant's motion for summary judgment is granted. Fed. R. Civ. P. 56(c). See: Smith v. Hudson, 600 F.2d (6th Cir.), cert. denied, 444 U.S. 986, 100 S. Ct. 495 (1979); Bryant v. Commonwealth of Kentucky, 490 F.2d 1273 (6th Cir. 1974); Daily Press Inc. v. United Press Int'l., 412 F.2d 126 (6th Cir.) cert. denied, 396 U.S. 990, 90 S. Ct. 489 (1969).

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | |
|---|---|
| CITY OF NORTH OLMSTED, OHIO, Plaintiff, | CASE NO. C81-2058 |
| | Judge John M. Manos |
| v. | O R D E R |
| GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, Defendant. | |

Pursuant to the Memorandum of Opinion issued in the above-captioned case this date, the defendant's motion for summary judgment is granted.

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

THE SUPREME COURT OF OHIO

THE STATE OF OHIO, )
) 1981 Term
City of Columubs. ) To wit: Sep 16 1981

: No. 81-1087
Greater Cleveland Regional Transit Authority, et al, : APPEAL FROM THE COURT OF APPEALS
:
Appellees, : For Cuyahoga County
:
vs. :
:
City of North Olmsted et al.,
:
Appellants. :

This cause, here on appeal as of right from the Court of Appeals for Cuyahoga County was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

FOR YOUR INFORMATION
ONLY, NOT FOR FILING

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Cuyahoga County for

entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this _____ day of _____, 19____.

_____Clerk

_____Deputy

THE SUPREME COURT OF OHIO

THE STATE OF OHIO, City of Columbus. ) 1981 Term )To wit: Sep 16 1981

No. 81-1087

Greater Cleveland Regional Transit Authority et al,

Appellees,

vs.

City of North Olmsted, et al.,

Appellants.

APPEAL FROM THE COURT OF APPEALS for CUYAHOGA County

This cause, here on appeal as of right from the Court of Appeals for Cuyahoga County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

FOR YOUR INFORMATION ONLY, NOT FOR FILING

It is further ordered that a copy of

this entry be certified to the Clerk of the Court of Appeals for Cuyahoga County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this _____day of _____, 19_____

_____ Clerk

_____ Deputy

THE SUPREME COURT OF OHIO

THE STATE OF OHIO, )
) 1981 Term
City of Columbus. ) To wit: Sep 16 1981

No. 81-1087

Greater Cleveland Regional Transit Authority et al,

Appellees,

vs.

City of North Olmsted et al.,

Appellants.

MOTIONS FOR AN ORDER DIRECTING THE COURT OF APPEALS

For Cuyahoga County

TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

FOR YOUR INFORMATION
ONLY, NOT FOR FILING

COSTS:

Motion Fee, $20.00, paid by City of North Olmsted, Motion Fee, $20.00 paid by Thomas J. Keenan.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the

foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court

this_____day of _____,

19_____

_____Clerk

_____Deputy

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA

No. 42982, 43117,
& 43419

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, ET AL.,

APPELLEE

VS.

CITY OF MAPLE HEIGHTS AND CITY OF NORTH OLMSTED

(43419 - City of North Olmsted, Appellant v. Greater Cleveland Regional Transit Authority, et al, Appellees)

APPEAL FROM

COMMON PLEAS COURT

No. 999314, 999315, & 999358

JOURNAL ENTRY AND OPINION

DATE May 14, 1981

COOK, P.J.:

This cause came on to be heard upon the pleadings and the transcript of the evidence and the record in the Common Pleas Court, and was argued by counsel for the parties; and upon consideration, the court finds no error prejudicial to the appellant and therefore the judgment of the Common Pleas Court is affirmed. Each assignment of error

was reviewed and upon review the following disposition made:

On December 30, 1974, the Board of County Commissioners of Cuyahoga County and the Council of the City of Cleveland, by resolution and ordinance respectively, created the Greater Cleveland Transit Authority, hereinafter referred to as "Authority."

Both the county's resolution and the city's ordinance provided:

> "That a regional transit authority created by the City and County with territorial boundaries and jurisdiction coextensive with the territorial boundaries of the County of Cuyahoga be, and the same is, created by this resolution and the ordinance of the Council of the City of Cleveland pursuant to Sections 306.30 through 306.54 and 306.70 and 306.71 of the Ohio Revised Code, as amended by

Amended Substitute Senate Bill No. 544, effective June 29, 1974."

Subsequent to the creation of the Authority, Cuyahoga County and the City of Cleveland entered into a Memorandum of Understanding whereby the Cleveland Transit System was transferred to the Authority, contingent upon the enactment of a sales tax for transit purposes of not less than one percent.

On July 22, 1975, the electors of Cuyahoga County approved a "sales and use tax" to be "levied for all transit purposes of the Greater Cleveland Transit Authority at a rate not exceeding 1% for a continuing period of time."

In the summer of 1975, the Authority entered into "Public Transportation Operating Agreements" with the Cities of North Olmsted and Maple Heights, pursuant to R.C. 306.35(G), which set forth that the

municipalities were to provide transit services from October 2, 1975 to October 2, 1977 in return for the Authority providing full subsidy of the transit operations of the respective municipalities and other financial considerations. The Agreements further provided, as to each municipality, that the Authority "may eventually assume operation, ownership and control of the City's scheduled bus service, and that this matter shall be a subject of negotiation between the parties before the expiration of the term of this Agreement."

The Authority's Agreements with North Olmsted and Maple Heights were extended by mutual resolution several times, the last of these extensions expiring on March 5, 1980. However, the operation and subsidy of the two bus systems is presently continuing pursuant to orders of the trial court..

From mid 1978 to June, 1979, there were separate negotiations between the parties with respect to the subject matter of the acquisition by the Authority of the North Olmsted and Maple Heights bus lines, as provided for in their earlier Agreements. However, such negotiations were fruitless.

On June 8, 1979, the Authority filed complaints against the Cities of North Olmsted and Maple Heights seeking a declaratory judgment that:

"1. it was the intent of the legislative enactments creating R.T.A. that there be established in Cuyahoga County one single, unified transit authority;

"2. that a contract dated January 21, 1976 between R.T.A. and Maple Heights, and a similar contract dated October 5,

1975 between R.T.A. and North Olmsted were null and void, as a result of the term of such contracts having expired;

"3. that R.T.A. has no further legal obligation, contractual or statutory, to either the municipalities of Maple Heights or North Olmsted, and

"4. That R.T.A., however, is required by law to render transportation services throughout Cuyahoga County, servicing all of the residents thereof without regard to whether such service may be rendered in competition with other publicly owned transit facilities.

On the same date, North Olmsted filed a complaint against the Cleveland Regional Transit Authority, the C.R.T.A.'s Board of

Trustees and Cuyahoga County seeking a declaratory judgment:

"1. that R.T.A. had been illegally formed,

"2. that R.T.A. was under a continuing statutory duty to subsidize North Olmsted's municipally owned transit system."

The City of Maple Heights filed a counterclaim in R.T.A.'s action seeking a declaratory judgment:

"1. that R.T.A. may not acquire ownership of the transit facility owned by Maple Heights without consent of that City;

"2. that R.T.A. is legally bound to continue its contractual relationship with Maple Heights."

The cases were consolidated in the trial court for trial.

On September 24, 1980, the trial court

rendered a declaratory judgment holding, among other matters:

"1. that R.T.A. is a duly created regional transit authority, established in accordance with Ohio statute, and having territorial jurisdiction throughout Cuyahoga County;

"2. that the Ohio Revised Code does not require the consent of all governmental entities situated within Cuyahoga County and having a proprietary interest in land transportation systems, as a condition precedent to the formation of a regional transit authority;

"3. that the contracts known as Public Transportation Operating Agreements between R.T.A. and the Cities of Maple Heights and

North Olmsted, respectively, had expired, and that R.T.A. had no continuing obligations thereunder;

"4. that R.T.A. was not under a legal duty to continue its relationship with the Cities of Maple Heights and North Olmsted; and

"5. that R.T.A. is required to implement and maintain continuing county-wide transit service by any feasible method, which may include the purchase of suburban lines, entering into new contracts with municipalities conducting transit lines, or the operation of transit lines parallel to those conducted by municipally owned transit systems."

Timely appeals were filed by North Olmsted and Maple Heights which were con-

solidated for purposes of briefing and arguments in this court.

Appellants have assigned the following errors:

1. The trial court erred in concluding that the Greater Cleveland Regional Transit Authority can exercise jurisdiction within the municipalities of Maple Heights and North Olmsted without first obtaining the consent of these municipalities to the exercise of such jurisdiction.
2. The trial court erred in concluding that RTA has lawful authority to enter into unlimited competition with the municipally owned bus lines of Maple Heights and North Olmsted without the consent of these municipalities.
3. The trial court erred in concluding

ing that RTA was not obligated to cooperate with Maple Heights and North Olmsted in providing county-wide mass transit services to these cities.

The assigned errors are without merit.

The creation of regional transit authorities is governed by Chapter 306 of the Revised Code.

R.C. 306.32, in pertinent parts, reads as follows:

"Any county, or any two or more counties, municipal corporations, townships, or any combination thereof, may create a regional transit authority by the adoption of a resolution or ordinance by the board of county commissioners of each county, the legislative authority of each municipal corporation, and the board of township trustees of

each township which is to create or to join in the creation of the regional transit authority...

* * *

"The territorial boundaries of a regional transit authority shall be coextensive with the territorial boundaries of the counties, municipal corporations, and townships included within the regional transit authority....."

The resolution adopted by the Board of County Commissioners of Cuyahoga County and the ordinance passed by the Council of the City of Cleveland established the territorial jurisdiction of the Authority as follows:

"Section 2: That a regional transit authority created by the City and County with territorial boundaries of the County of Cuyahoga be, and the same is, created by this

resolution and the ordinance of the Council of the City of Cleveland..."

The trial court declared that the Greater Cleveland Regional authority can exercise jurisdiction within the municipalities of North Olmsted and Maple Heights without first obtaining their consent to the exercise of such jurisdiction.

The Cities of North Olmsted and Maple Heights contend that such a declaration by the trial court is erroneous. In support of their contention, they argue such a declaration is contrary to the rights granted municipalities by Article XVIII, Section 4, of the Ohio Constitution and Chapter 306 of the Revised Code, the statutory authority for creating regional transit authorities.

Article XVIII, Section 4, of the Ohio Constitution reads, in pertinent part, as follows:

"Any municipality may acquire, construct, own, lease, and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service..."

The ownership and operation of a bus line constitutes the operation of a public utility. The Cleveland Railway v. Village of North Olmsted (1935), 130 Ohio St. 144, 148.

The Ohio Supreme Court has subsequently held that the constitutional grant of power to a municipality is self-executing and cannot be denied or limited in any manner by the state legislature. State ex rel. McCann v. City of Defiance (1958),

167 Ohio St. 313, 316; Swank v. Shiloh (1957), 166 Ohio St. 415.

The Cities of North Olmsted and Maple Heights argue that the court's declaration violates their authority to operate their transportation public utilities. In support of this argument, they cite this court's decision in City of Seven Hills v. City of Cleveland (1980, unreported Cases 40114 and 40115, Court of Appeals for Cuyahoga County) as stating that a state legislature has no power to limit or restrict tne authority of a municipality to operate a public utility and that the inclusion of a municipality into a regional authority for the operation of a public utility without that municipality's consent would be a violation of Article XVIII, Section 4, of the Ohio Constitution.

However, Article XVIII, Section 4 of the Ohio Constitution does not grant muni-

cipalities an exclusive right to conduct transit services within or without their corporate boundaries. Said Article is permissive in nature, permitting a municipality to create and operate any public utility for the benefit of its inhabitants. While it is correct that a state legislature cannot limit or restrict such municipal power, in the instant cause, the authority is not seeking to do so and the declaration by the trial court does not attempt to do so.

The City of Seven Hills case, relied upon by the Cities of North Olmsted and Maple Heights, does not support their position. That case concerned an effort by various municipalities, which buy water from the City of Cleveland, to create a regional water district pursuant to Chapter 6119 of the Revised Code and force the City of Cleveland to transfer title to its

municipally owned water system to said regional water district. Chapter 6119 provides that regional water districts might be judicially formed only upon consent of the affected municipalities. Chapter 306, on the other hand, provides regional transit authorities may be created by counties, as in the instant case, and that the jurisdiction of such an authority is coextensive with the boundaries of the political subdivisions creating the regional transit authority, in the subject authority, Cuyahoga County. Consent of the political subdivisions within the territorial limits of a county created regional transit system is not required.

The Cities of North Olmsted and Maple Heights further argue that Chapter 306 of the Revised Code itself requires each political subdivision involved in an authority to pass a resolution or ordinance

which consents to its inclusion within said authority.

While such a position could be taken by the Cities of North Olmsted and Maple Heights if political subdivisions other than the county in which they are located seek to include them in an authority, where the county in which the municipalities are located created a county-wide authority, the jurisdiction of the Authority is the entire county pursuant to the provisions of Chapter 306.

Having determined that where a county creates a regional transit authority for the entire county the jurisdiction of said authority is the entire county, we turn to the question of whether said authority is empowered to extend its transit lines into and through political subdivisions within said county.

The answer to the question is found in

R.C. 306.35(G), which provides a regional transit authority:

> "May acquire, construct, improve, extend, repair, lease, operate, maintain or manage transit facilities within or without its territorial boundaries, deemed necessary to accomplish the purposes of its organization and make charges for the use of transit facilities.

Since the municipalities of North Olmsted and Maple Heights are within the territorial boundaries of the county-wide regional transit authority created by Cuyahoga County and the City of Cleveland, the Authority is authorized to operate transit facilities within said municipalities.

Since Article XVIII, Section 4 of the Ohio Constitution permits municipalities to

own and operate a bus line within its jurisdiction and Chapter 306 of the Revised Code authorizes a county-wide transit authority to operate transit facilities within its territorial boundaries, the possibility of competing bus lines exists in North Olmsted and Maple Heights.

The Appellants consider such a com-competitive bus line would constitute an appropriateion of the municipal bus line. However, the mere act of competition does not constitute the taking of property. Duke Power Company v. Greenwood County (1938), 302 U.S. 485; Alabama Power Company v. Ickes (1938), 302 U.S. 464; Helena Water Works Co. v. Helena (1904), 195 U.S. 383.

Appellants argue the authority cannot operate transit lines within their boundaries without their consent, but local and municipal interests must yield to the larger concerns of the State of Ohio if the regulation of the subject matter affects the general public.

The Ohio Supreme Court in Beachwood v. Board of Elections (1958), 167 Ohio St. 369, at page 371, said:

> "The power of local self-government to municipalities by Article XVIII relates solely to the government and administration of the internal affairs of the municipality, and, in the absence of statute conferring a broader power, municipal legislation must be confined to that area. See Prudential Co-Operative Realty Co. v. City of

Youngstown, 118 Ohio St. 204, 160, 160 N.E. 695. Where a proceeding is such that it affects not only the municipality, itself but the surrounding territory beyond its boundaries, such proceeding is no longer one which falls within the sphere of local self-government but is one which must be governed by the general law of the state.

"To determine whether legislation is such as falls within the area of local self-government, the result of the proceedings thereunder must be considered. If the result affects only the municipality itself, with no extra-territorial effects, the subject is clearly within the power of local self-government and is a matter for the determination

of the municipality. However, if the result is not so confined it becomes a matter for the General Assembly."

In The Cleveland Electric Illuminating Company v. City of Painesville (1960), 15 Ohio St. 2d 125, at page 129, the same court once again set forth the doctrine of statewide concern:

"The power granted under Section 3 of Article XVIII relates to local matters and even in the regulation of such local matters a municipality may not infringe on matters of general and statewide concern.

"As was said in the opinion in State ex rel. McElroy v. Akron, 173 Ohio St. 189, 19 O.O. (2d) 3, 5:

'Due to our changing society, many things which were once considered

a matter of purely local concern and subject strictly to local regulation, if any, have now become a matter of statewide concern, creating the necessity for statewide control.' "

In the cause sub judice, Chapter 306 is a legislative enactment by the legislature of Ohio in an area of statewide concern, public transportation. While such legislation does not conflict with the power of municipalities to own and operate their own transit systems, a municipality cannot override the powers of regional transit systems, authorized by state legislation to operate such systems throughout their jurisdictions, including municipalities which be within a county-wide transit authority.

We find no federal statute or policy precluding competition between federally

funded regional transit authorities and municipal transit lines, as contended by the Cities of North Olmsted and Maple Heights.

Nor do we find any authority for the proposition advanced by the two Cities that the trial court erred in declaring that the Authority is not obligated to cooperate with the Cities of North Olmsted and Maple Heights in providing county-wide mass transit services to those cities.

R.C. 306.35(G) and (M) and R.C. 306.44 provide a regional transit authority:

> "(G) May acquire, construct, improve, extend, repair, lease, operate, maintain, or manage transit facilities within or without its territorial boundaries, deemed necessary to accomplish the purposes of its organization and make charges for the use of transit facilities." (Emphasis added) -79-

"(M) May provide by agreement with any county, including the counties within its territorial boundaries, or any municipal corporation or any combination thereof for the acquisition, construction, improvement, extension, maintenance, or operation of any transit facility to be owned and operated by and such county or municipal corporation and the terms on which it shall be acquired, leased, constructed, maintained, or operated, and the amount of the cost and expense thereof to be paid by each such county or municipal corporation." (Emphasis added),

306.44 Parties to contract

"The board of trustees of a regional transit authority may enter into

such contracts or other arrangements with the United States government or any department thereof, with the state government of this or other states, with counties, municipalities, townships, or other governmental agencies created by or under the authority of the laws of the state or other states, with persons, with public corporations and private corporations as may be necessary or convenient for the making of surveys, investigations, or reports thereon, and for the exercise of the powers granted by sections 306.30 to 306.47, inclusive, of the Revised Code." (Emphasis added)

Thus, we conclude the determination of whether or not to enter into agreements with

the Cities of North Olmsted and Maple Heights is within the sound discretion of the Greater Cleveland Regional Transit Authority.

The courts may not use their injunctive power to control the discretion of governmental boards or officers in matters within their authority and discretion in the absence of an abuse of their discretion. Cincinnati v. Wehehoft (1948), 119 Ohio St. 136.

The fact that a sales tax has been levied countywide for the purposes of the Greater Regional Transit Authority does not require the Authority to subsidize the municipally owned bus lines of North Olmsted and Maple Heights. While the Ohio Constitution requires that taxation be uniform, such requirement does not relate to the expenditure of the money so raised.

The Ohio Supreme Court has held that there need not be an equal distribution of the potential benefits of a countywide tax. State ex rel. Speeth v. Carney, Auditor (1955), 163 Ohio St. 159; State ex rel. Bowman v. Board of County Commissioners (1931), 124 Ohio St. 174.

Judgment affirmed.

It is ordered that appellee(s) recover of appellant(s) their costs herein taxed.

This Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Exceptions.

RECEIVED FOR FILING May 14 1981
Gerald E. Fuerst, Clerk - By_____ Dep.

Judge

Robert E. Cook
PRESIDING JUDGE

STILLMAN, J.,
SILBERT, J., CONCUR
(STILLMAN, J., AND SILBERT, J.,
Retired of the Eighth Appellate
District, Sitting by Assignment;
COOK, P.J., of the Eleventh Appellate
District, Sitting by Assignment)

APPEARANCES:

For appellees: John T. Corrigan; Thomas E. Wagner; Craig S. Miller; Malcolm Douglas and Edwart Opett; For appellants: James V. Shipan; Thomas J. Keenan; Michael R. Gareau and Daniel J. Ryan.

N.B. This entry is made pursuant to the third sentence of Rule 22(D), Ohio Rules of Appellate Procedure. This is an announcement of decision (see Rule 26). Ten (10) days from the date hereof this judgment will be stamped to indicate journalization, at which time it will become the judgment and order of the court and

time period for review will begin to run.

IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

| | |
|---|---|
| GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, et al. | CASE NOS. 999314, 999315 and 999358 |
| Plaintiffs, | JUDGE DAVID T. MATIA |
| -vs- | |
| CITY OF MAPLE HEIGHTS, CITY OF NORTH OLMSTED, | FINDINGS OF FACT AND CONCLUSIONS OF LAW |
| Defendants. | |

***

## I. FINDINGS OF FACT

1. These proceedings were commenced on June 8, 1979. On that date, the Greater Cleveland Regional Transit Authority (R.T.A.) filed its Complaints against the Cities of Maple Heights and North Olmsted, respectively, in Case Numbers 999314 and 999315, seeking a declaratory judgment with respect to R.T.A.'s rights, duties and obligations under Sections 306.30 et seq. of the Ohio Revised Code, Resolution No. 2865 of the

Board of County Commissioners of Cuyahoga County, Ordinance No. 2380-B-74 of the City of Cleveland, and certain Public Transportation Operating Agreements between R.T.A. and the Cities of Maple Heights and North Olmsted, respectively.

2. On the same date, the City of North Olmsted filed its Complaint in Case No. 999358, naming as Defendants R.T.A., the R.T.A. Board of Trustees, County of Cuyahoga, and City of Cleveland, and seeking a declaration with respect to its rights under Section 306.30 et seq. of the Ohio Revised Code and the Public Transportation Operating Agreement between North Olmsted and R.T.A.

3. Thereafter, the City of Maple Heights filed its Counterclaim for declaratory judgment against R.T.A., seeking a declaration with respect to that City's rights under Chapter 306 of the Ohio Re-

vised Code, and the Public Transportation Operating Agreement between Maple Heights and R.T.A.

4. The jurisdiction of this Court was invoked by the parties under Chapter 2721 of the Ohio Revised Code, and Rule 57 of the Ohio Rules of Civil Procedure, and the actions were consolidated for trial upon motion of North Olmsted.

5. On December 30, 1974, the Board of Commissioners of Cuyahoga County enacted Resolution No. 2865 creating R.T.A., and establishing the terms and conditions for the transfer of the Cleveland Transit System to R.T.A. The Resolution of the Board of County Commissioners determined "that the creation of a regional transit authority is necessary to provide a coordinated, consolidated, comprehensive public mass transportation system..." That Resolution further provided, with

vised Code, and the Public Transportation Operating Agreement between Maple Heights and R.T.A.

4. The jurisdiction of this Court was invoked by the parties under Chapter 2721 of the Ohio Revised Code, and Rule 57 of the Ohio Rules of Civil Procedure, and the actions were consolidated for trial upon motion of North Olmsted.

5. On December 30, 1974, the Board of Commissioners of Cuyahoga County enacted Resolution No. 2865 creating R.T.A., and establishing the terms and conditions for the transfer of the Cleveland Transit System to R.T.A. The Resolution of the Board of County Commissioners determined "that the creation of a regional transit authority is necessary to provide a coordinated, consolidated, comprehensive public mass transportation system..." That Resolution further provided, with

respect to the territorial jurisdiction of R.T.A.:

> "That a regional transit authority created by the City and County with territorial boundaries and jurisdiction coextensive with the territorial boundaries of the County of Cuyahoga be, and the same is, created by this resolution and the ordinance of the Council of the City of Cleveland pursuant to Sections 306.30 through 306.70 and 306.71 of the Ohio Revised Code, as amended by Amended Substitute Senate Bill No. 544, effective June 29, 1974."

6. On December 30, 1974, the Council of the City of Cleveland enacted Ordinance No. 2380-B-74, also authorizing the creation of R.T.A., and containing provisions identical to those set forth in Resolution 2865 of

the Board of County Commissioners.

7. At the time of the creation of R.T.A., there were five municipally owned transit systems operating within Cuyahoga County: the transit systems owned and operated by the Cities of Cleveland, Shaker Heights, Euclid, Maple Heights and North Olmsted, respectively.

8. On May 21, 1975, the City of Cleveland, the Transit Board of the City of Cleveland, the Board of Commissioners of Cuyahoga County, and three designated representatives of the Cuyahoga County Mayors' and Managers' Association, entered into a Memorandum of Understanding for the transfer to R.T.A. of the transit system then owned by the City of Cleveland and conducted by the Transit Board of that City.. The transfer was contingent upon the enactment and approval by the electors of Cuyahoga County of a sales tax levy of not

less than one percent (1%) for transit purposes.

9. On July 22, 1975, the City of Shaker Heights entered into a Memorandum of Understanding with R.T.A., agreeing to transfer all operating assets of the City of Shaker Heights Rapid Transit to R.T.A. subject to the condition precedent, that the electors of Cuyahoga County pass a one per cent (1%) sales tax to be used for public mass transit purposes.

10. On July 1, 1979, after having operated its transit system pursuant to the terms and conditions of a Public Transportation Operating Agreement with R.T.A., dated December 5, 1975, the City of Euclid agreed to transfer its municipally owned transit system to R.T.A.

11. The only monetary compensation received by the Cities of Cleveland, Shaker Heights and Euclid for the transfer from

R.T.A. of their municipally owned transit systems to R.T.A. consisted of payment to those municipalities of unreimbursed capital expenditures made from their general funds.

12. On July 22, 1975, the electors of Cuyahoga County, including the electors of the Cities of North Olmsted, Maple Heights, Cleveland, Shaker Heights and Euclid, approved the following proposition by a seventy-two percent (72%) majority:

> "Shall a sales and use tax be levied for all transit purposes of the Greater Cleveland Regional Transit Authority at a rate not exceeding 1% for a continuing period of time."

The sales tax so authorized by the electors of Cuyahoga County has, at all times thereafter, been levied throughout the territorial jurisdiction of Cuyahoga County.

13. On October 5, 1975, the City of North Olmsted and R.T.A. executed and entered into an agreement entitled "Public Transportation Operating Agreement" (Operating Agreement), pursuant to which North Olmsted agreed to provide certain transit services, and R.T.A. agreed to provide a full financial subsidy of North Olmsted's transit operations. That Operating Agreement contained the following provision with respect to the term thereof:

> "13. Term. The term of this Agreement shall commence on the 5th day of October, 1975, and expire on the 5th day of October, 1977, unless extended by mutual agreement of the parties hereto evidenced in a writing signed by each of such parties.
>
> It is contemplated by the parties

that the Authority may eventually assume operation, ownership and control of the City's scheduled bus service, and that this matter shall be a subject of negotiation between the parties before the expiration of the term of this Agreement."

14. The Operating Agreement between North Olmsted and R.T.A. also provided for the payment by R.T.A. of North Olmsted's bonded indebtedness, incurred by North Olmsted for the purchase of twelve buses acquired by it in 1970 and 1971. Pursuant to that contractual provision, R.T.A. made debt service payments in the total amount of Two Hundred Seventy-Five Thouasand Four Hundred Eighty-Four Dollars ($275,484.00).

15. On January 21, 1976, effective as of October 5, 1975, the City of Maple Heights and R.T.A. executed and entered into an

agreement entitled "Public Transportation Operating Agreement" (Operating Agreement), pursuant to which the City of Maple Heights agreed to provide certain transit services, and R.T.A. agreed to subsidize fully Maple Heights' transit operations. That Operating Agreement provided as follows, with respect to the term thereof:

> "13. Term. The term of this Agreement shall commence on the 5th day of October, 1975, and expire on the 5th day of October, 1977, unless extended by mutual agreement of the parties hereto evidenced in a writing signed by each of such parties.
>
> It is contemplated by the parties that the Authority may eventually assume operation, ownership, and control of the City's scheduled bus service, and that

this matter shall be a subject of negotiation between the parties before the expiration of the term of this Agreement."

16. The Agreement further provided for the payment by R.T.A. to Maple Heights of Forty-Seven Thousand None Hundred Seventy-Seven Dollars ($47,977.00) during 1975 as reimbursement to Maple Heights for certain transit improvements, and the additional payment to Maple Heights of Two Hundred Forty-six Thousand Five Hundred Dollars ($246,500.00) during 1976 for the purpose of permitting Maple Heights to repay monies borrowed by it from other City funds, which payments were made to Maple Heights by R.T.A.

17. Upon the expiration of the Public Transportation Operating Agreements on October 5, 1977, R.T.A., through its Board of Trustees, and the Cities of North Olmsted

and Maple Heights, through their respective City Councils, mutually authorized the extension of said Operating Agreements for a period of one year, until October 5, 1978.

18. Pursuant to legislative resolutions by the Board of Trustees of R.T.A., said Operating Agreements were extended for various periods of time, until March 5, 1980.

19. On various occasions prior to March 5, 1980, there were negotiations between R.T.A. and the Cities of Maple Heights and North Olmsted, respectively, concerning the continuation of the relationship between R.T.A. and the Defendant municipalities.

20. The Council of the City of Maple Heights authorized that City's representatives to negotiate only with respect to an extension of the then existing Operating Agreement, and not with regard to the

eventual acquisition by R.T.A. of the operation, ownership and control of that City's scheduled bus service.

21. Negotiations between R.T.A. and Maple Heights did not result in any agreement with respect to the continuation of the contractual relationship between R.T.A. and Maple Heights, or any agreement regarding the eventual acquisition by R.T.A. of the ownership, operation and control of the City's scheduled bus service.

22. Nor did negotiations between R.T.A. and North Olmsted result in any agreement concerning the continuation of the contractual relationship between R.T.A. and North Olmsted, or any agreement regarding the eventual acquisition by R.T.A. of the ownership, operation and control of the City's scheduled bus service.

23. R.T.A. fulfilled all of its contractual obligations under said Operating

Agreements to the Cities of Maple Heights and North Olmsted.

24. The evidence does not show that R.T.A. has repeatedly or wrongfully threatened the Cities of North Olmsted or Maple Heights with termination of the Operating Agreement relationship in order to wrongfully coerce those Cities to enter into an agreement to transfer their municipally owned transit systems to R.T.A.

25. The Operating Agreements between R.T.A. and the Cities of Maple Heights and North Olmsted, respectively, have expired.

26. The provisions of the respective Operating Agreements were, however, extended by a Preliminary Injunction issued February 26, 1980 by this Court pending trial of the litigation upon its merits and determination thereof by the Court.

## II. CONCLUSIONS OF LAW

1. This Court has jurisdiction to issue

a declaratory judgment pursuant to Chapter 2721 of the Ohio Revised Code and Rule 57 of the Ohio Rules of Civil Procedure with respect to all issues raised in Cases Numbered 999314, 999315, and 999358.

2. The Greater Cleveland Regional Transit Authority is a political subdivision of the State of Ohio, organized and existing pursuant to and in accordance with Section 306.30 through 306.54, 306.70 and 306.71 of the Revised Code of the State of Ohio and is engaged in providing public transportation services throughout Cuyahoga County, Ohio.

3. Section 306.32 of the Ohio Revised Code does not require that the City of Cleveland and the County of Cuyahoga secure the consent of all governmental entities situated within Cuyahoga County and having a proprietary interest in a land transportation system as a condition precedent to

the formation of a Regional Transit Authority.

4. The Territorial jurisdiction of the Greater Cleveland Regional Transit Authority is countywide and such Authority has the statutory duty to provide transportation service to the ridership throughout Cuyahoga County.

5. The one percent (1%) Sales and Use Tax for Rapid Transit Authority purposes was submitted to the electorate in the manner provided by law, and is valid.

6. Chapter 5739 of the Revised Code of the State of Ohio does not require that the Greater Cleveland Regional Transit Authority get commitments from all political subdivisions in Cuyahoga County to participate in or join in such Authority as a condition precedent to the levy of the county-wide one percent (1%) Sales and Use Tax.

7. The payment by residents of Maple Heights and North Olmsted of a sales tax levied countywide for the purpose of the Greater Cleveland Regional Transit Authority does not require the equal distribution of potential benefits in the form of monetary subsidies in proportion to the burdens of the tax.

8. The Public Transportation Operating Agreements between the Greater Cleveland Regional Transit Authority and the Cities of Maple Heights and North Olmsted have expired by lapse of time and the Greater Cleveland Regional Transit Authority has no continuing obligations under the terms of said Operating Agreements.

9. The Greater Cleveland Regional Transit Authority is not vested with an absolute right to acquire the title and ownership of a publicly owned municipal transit system without the consent of the

municipality. The Court is without power to compel the Cities to exercise their discretionary power of sale.

10. The Greater Cleveland Regional Transit Authority is under no statutory duty to continue its relationship with the Cities of Maple Heights and North Olmsted under the terms of the Operating Agreements, nor does such a duty arise on the theory of "estoppel" or "vested interest".

11. Neither the Constitution nor the statutes of the State of Ohio prohibit the Greater Cleveland Regional Transit Authority from operating parallel transit service lines through the Cities of Maple Heights and North Olmsted.

12. Statutory authority enabling the Greater Cleveland Regional Transit Authority to operate transit facilities, parallel or otherwise, within or without its territorial boundaries is found in Section 306.35 of

the Ohio Revised Code of the State of Ohio.

13. Municipal corporations are not granted freedom from competition, nor exclusive territorial rights in the operation of their transit systems, either by the Ohio Constitution or the statutes of the State of Ohio.

14. The fact that the operation of parallel competitive service lines by the Greater Cleveland Regional Transit Authority would affect adversely the value of and the profitability of suburban transit systems does not, in and of itself, constitute an unlawful appropriation of property, nor an invasion of home rule powers of the municipalities.

15. The one percent (1%) Sales and Use Tax by law is levied upon all residents throughout Cuyahoga County for transit authority purposes, and all residents of said County are entitled to share in the

.idership benefits flowing from such tax.

16. The suburban ridership must be afforded continuing transit service at its present level of quality and frequency, and, therefore, the Greater Cleveland Regional Transit Authority is required to implement and to maintain such degree of countywide service by any feasible method, whether it be by purchase of suburban lines, by entering into operating agreements with the suburbs or by operating parallel transit lines wherever necessary.

DAVID T. MATIA, JUDGE

Dated: October 15th, 1980

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| STATE OF OHIO | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF CUYAHOGA | ) | CASE NOS. 999314, 999315 and 999358 |
| | | JUDGE DAVID T. MATIA |
| GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, et al. | ) | |
| Plaintiffs, | ) | |
| vs. | ) | JUDGMENT |
| CITY OF MAPLE HEIGHTS<br>CITY OF NORTH OLMSTED | ) | |
| Defendants. | ) | |

This action came on for trial before the Court sitting without a jury on the 21st day of July, 1980, and thereafter, upon the complaint of the Greater Cleveland Regional Transit Authority for declaratory judgment against the respective defendants, upon the counterclaim of the City of Maple Heights for declaratory judgment, and upon the complaint of the City of North Olmsted for declaratory judgment and injunctive relief.

The Court having heard the testimony adduced on trial and having examined the proofs offered by the respective parties together with the legal briefs submitted by them and the issues having been duly tried and a decision having been duly rendered: now, therefore

IT IS ORDERED, ADJUDGED AND DECLARED the rights and the status of the respective parties are as follows:

1. The Greater Cleveland Regional Transit Authority is a subdivision of the State of Ohio, organized and existing pursuant to and in accordance with Section 306.30 through 306.54, 306,70 and 306.71 of the Revised Code of the State of Ohio and is engaged in providing public transportation services throughout Cuyahoga County, Ohio.

2. Section 306.32 of the Ohio Revised Code does not require that the City of

Cleveland and the County of Cuyahoga secure the consent of all governmental entities situated within Cuyahoga County and having a proprietary interest in a land transportation system as a condition precedent to the formation of a Regional Transit Authority.

3. The territorial jurisdiction of the Greater Cleveland Regional Transit Authority is county wide and such Authority has the statutory duty to provide transportation service to the ridership throughout Cuyahoga County.

4. The one percent (1%) Sales and Use Tax for Rapid Transit Authority purposes was submitted to the electorate in the manner provided by law and is valid.

5. Chapter 5739 of the Revised Code of the State of Ohio does not require that the Greater Cleveland Regional Transit Authority get commitments from all political

subdivisions in Cuyahoga County to participate in or join in such Authority as a condition precedent to the levy of the county-wide one percent (1%) Sales and Use Tax.

6. The payment by residents of Maple Heights and North Olmsted of a sales tax levied countywide for the purpose of the Greater Cleveland Regional Transit Authority does not require the equal distribution of potential benefits in the form of monetary subsidies in proportion to the burdens of the tax levied.

7. The public transportation operating agreements between the Greater Cleveland Regional Transit Authority and the Cities of Maple Heights and North Olmsted have expired by lapse of time and the Greater Cleveland Regional Transit Authority has no continuing obligations under the terms of said operating agreements.

8. The Greater Cleveland Regional Transit Authority is not vested with an absolute right to acquire the title and ownership of a publicly owned municipal transit system without the consent of the municipality. The Court is without power to compel the Cities to exercise their discretionary power of sale.

9. The Greater Cleveland Regional Transit Authority is under no statutory duty to continue its relationship with the Cities of Maple Heights and North Olmsted under the terms of the operating agreements nor does such a duty arise on the theory of "estoppel" or "vested interest."

10. Neither the Constitution nor the Statutes of the State of Ohio prohibit the Greater Cleveland Regional Transit Authority from operating parallel transit service lines through the Cities of Maple Heights and North Olmsted.

11. Statutory authority enabling the Greater Cleveland Regional Transit Authority to operate transit facilities, parallel or otherwise, within or without its territorial boundaries is found in Section 306.35 of the Revised Code of the State of Ohio.

12. Municipal corporations are not granted freedom from competition nor exclusive territorial rights in the operation of their transit systems either by the Ohio Constitution or the Statutes of the State of Ohio.

13. The fact that the operation of parallel competitive service lines by the Greater Cleveland Regional Transit Authority would affect adversely the value of and the profitability of suburban transit systems does not, in and of itself, constitute an unlawful appropriation of property nor an invasion of home rule powers of the municipalities.

14. The one percent (1%) Sales and Use Tax by law is levied upon all residents throughout Cuyahoga County for transit authority purposes and all residents of said county are entitled to share in the ridership benefits flowing from such tax.

The suburban ridership must be afforded continuing transit service at its present level of quality and frequency, and, therefore, the Greater Cleveland Regional Transit Authority is required to implement and to maintain such degree of county-wide service by any feasible method whether it be by purchase of suburban lines, by entering into operating agreements with the suburbs or by operating parallel transit lines wherever necessary.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in order to avoid a catastrophic breakdown of transit service within the municipalities of Maple Heights and

North Olmsted during the transition period resulting in irreparable harm to the riding public of those communities, the parties to this litigation are ordered to maintain the "status quo", now in effect, in accordance with the terms of the preliminary injunction previously ordered by this Court under date of February 26, 1980. The "status quo" is to remain in effect until such time as the Greater Cleveland Rapid Transit Authority exercises one of the options set forth in paragraph 14 hereof or until the 1st day of February, 1981, whichever comes sooner.

The Complaint in Case No. 999358 is dismissed as to the defendant, County of Cuyahoga, Ohio, and the defendant, City of Cleveland, Ohio, at the costs of the plaintiff, City of North Olmsted, Ohio.

All other parties in Cases No. 999314, 999315 and 999358 are to pay their own

costs.

Dated at Cleveland, Ohio, this 24th day of September, 1980.

DAVID T. MATIA, JUDGE
Court of Common Pleas